

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of K.S., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JEREMY LEE LOPEZ,

Respondent-Appellant,

and

KRISTY SCHMIDT,

Respondent.

UNPUBLISHED
February 21, 2003

No. 244343
Genesee Circuit Court
Family Division
LC No. 99-112204-NA

Before: Kelly, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to his child pursuant to MCL 712A.19b(3)(a)(ii), (g), and (l).¹ We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent was personally served with a copy of the supplemental petition seeking termination of his parental rights; however, he did not appear at the permanent custody hearing because he was incarcerated.² Respondent's counsel informed the trial court that he had been appointed to represent respondent only two weeks prior to the permanent custody hearing, and that he had only recently learned that respondent was incarcerated. Counsel requested that the proceedings be adjourned so he could secure respondent's presence for trial. The trial court

¹ The trial court's order also terminated the parental rights of respondent Kristy Schmidt, the mother of K.S. Schmidt has not appealed the order.

² Shortly before the hearing respondent was sentenced to two to fifteen years in prison for unarmed robbery, MCL 750.530.

denied the request, noting that respondent had not attended any previous hearings, had not expressed any interest in attending the permanent custody hearing, and had not contacted petitioner to demonstrate a substantial interest in gaining custody of the child.

Respondent first argues the trial court violated his right to due process when it refused to adjourn the proceedings. We disagree. Parental rights constitute a liberty interest entitled to constitutional protection. *In re Render*, 145 Mich App 344, 348; 377 NW2d 421 (1985). A respondent in a termination proceeding may appear in person or through counsel. MCR 5.973(A)(3)(b). An incarcerated respondent does not have an absolute right to attend a termination hearing. *In re Vasquez*, 199 Mich App 44, 48; 501 NW2d 231 (1993). To determine whether the respondent's presence is required, the trial court should apply the three-part balancing test articulated in *Mathews v Eldridge*, 424 US 319, 355; 96 S Ct 893; 47 L Ed 2d 18 (1976). Under this test, the trial court must balance the value of the private interest at stake, the risk that the respondent will be erroneously deprived of that interest if the court does not implement the requested procedure, and the burden on the government if it does implement the requested procedure. *Vasquez*, *supra*, 47-48.

Here, the trial court did not articulate verbatim these factors when it denied the request to adjourn the proceedings; however, it concluded that in light of the fact that respondent had not attended any previous hearings and had not expressed any substantial interest in the child prior to the permanent custody hearing, his presence was not required. The trial court did not err in so concluding. Nothing on the record indicates that respondent could have offered evidence that he had provided support for or maintained contact with the child, or that he was capable of doing so in the future. We conclude that respondent's position could not have been bolstered by his presence at the hearing. Cf. *Render*, *supra*, 349.

Respondent next contends that there was insufficient evidence to support the termination by clear and convincing evidence. We disagree.

We review a trial court's decision to terminate parental rights for clear error. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that the petitioner has proven by clear and convincing evidence the existence of one or more statutory grounds for termination, the court must terminate parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). We review the trial court's decision regarding the child's best interests for clear error. *Id.*, 356-357.

The trial court did not clearly err in finding that petitioner established by clear and convincing evidence the existence of one or more statutory grounds for the termination of respondent's parental rights. The evidence showed that respondent had seen the child on only one occasion, and had never provided any financial or emotional support for the child. The evidence also showed that respondent's parental rights to another child had been terminated in separate proceedings. The trial court did not clearly err in finding that termination of respondent's parental rights was warranted on the grounds of desertion, MCL 712A.19b(3)(a)(ii), failure to provide proper care or custody, MCL 712A.19b(3)(g), and termination of parental rights to another child, MCL 712A.19b(3)(l). The evidence did not show that termination of respondent's parental rights was clearly not in the child's best interests. MCL 712A.19b(5); *Trejo*, *supra*.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Helene N. White

/s/ Joel P. Hoekstra